



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 11, 2021

BY ECF

Honorable Jed S. Rakoff
United States District Judge
Southern District of New York
New York, New York 10007

Re: *United States v. Ruben Weigand and Hamid Akhavan*, S3 20 Cr. 188 (JSR)

Dear Judge Rakoff:

The Government respectfully writes in reply to Defendants Hamid Akhavan and Ruben Weigand's (together, "Defendants") letters, dated February 9, 2021 (Dkts. 140 ("Akhavan Response"), and 143 ("Weigand Response")), in opposition to the Government's Motion in Limine to admit into evidence certain business records on the basis of Rule 902(11) certifications (Dkt. 135 (the "Motion")). Defendants argue primarily that the Government's motion is premature because it has not yet produced all of the relevant certificates from business records custodians, and that they may yet be willing to stipulate that there is a proper foundation for certain categories of the records. They are wrong that the motion is premature, and whether they may now consider stipulating to some of the records' authenticity is irrelevant.

Federal Rule of Evidence 902(11) provides that records are self-authenticating if there is a certification that meets the requirements of Rule 803(6), as long as the proponent has given the adverse party reasonable written notice of the intent to offer the record and has made the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them. In other words, the primary purpose of Rule 902(11) is to lay out a notice procedure to give opponents an opportunity to make a meaningful objection to these otherwise self-authenticating records.

The Motion provided that notice, and yet Defendants have not articulated any specific concern regarding the accuracy or authenticity of any of the records, or the contents of the certificates, even where those have been in their possession for review and consideration for many months. There is thus no reason that the Court cannot rule now that these documents are self-authenticating pursuant to Rule 902(11).¹ This is true even for the compilations of data maintained

¹ Other records identified in Exhibit A to the Motion for which the Government is still obtaining the certificates, should similarly be admissible pursuant to Rule 902(11) after the Government has produced those certificates, unless Defendants raise a valid and specific objection. The

